

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E-FILED 1/22/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

NO. C 06-06140 RS

Plaintiff,

**ORDER DENYING MOTION TO
DISMISS OR STAY**

v.

HAMMON PLATING CORPORATION,

Defendant.

I. INTRODUCTION

Defendant Hammon Plating Corporation moves to dismiss this action or, in the alternative, for a stay, based on its contention that plaintiff Equal Employment Opportunity Commission (“EEOC”) failed to fulfil its statutory pre-suit obligation to engage in “conciliation” efforts to resolve this matter. As discussed with the parties at the hearing, there does not appear to have been such a complete failure by the EEOC to make conciliation efforts that would justify dismissal of this action, and Hammon’s alternative request for a stay appears to seek relief that could as easily be accommodated through early alternative dispute resolution proceedings in this action. The Court instructed the parties to meet and confer as to a plan for engaging in an alternative dispute resolution process. The parties have reported that they have agreed to submit to mediation pursuant to this District’s ADR program, “in an expeditious manner.” Accordingly, the motion will be denied, except to the extent that Hammon sought, and will obtain, expedited mediation of this dispute.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. BACKGROUND

Three former Hammon employees filed charges of discrimination with the EEOC against the company. The EEOC concluded there was reasonable cause to believe discrimination had occurred, and so advised the company. Hammon contends that the EEOC thereafter failed to comply with 42 U.S.C. section 2000e-5(f)(1), which authorizes the EEOC to bring suit only after first attempting “to secure from the respondent a conciliation agreement acceptable to the Commission.”

In opposing this motion, the EEOC applied for, and obtained, an order permitting it to file under seal the evidence it contends shows it made sufficient efforts to obtain a conciliation agreement. The EEOC pointed to section 706 (b) of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e-5(b)), which provides, among other things that “[n]othing said or done during and as a part of such informal endeavors [to conciliate] may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned.” In light of the statute, the sealing order, and the fact that at the hearing Hammon pressed for expedited mediation rather than dismissal, this order will not set forth the pre-suit communications between the parties.

III. DISCUSSION

Having reviewed the parties’ evidentiary submissions, the Court is satisfied that the EEOC’s efforts to obtain a conciliation agreement were not so lacking as to justify dismissal of this action. The Court declines to second-guess the judgment of the EEOC with respect to whether a more conciliatory approach would have been more likely to achieve the policy objectives of the statutory scheme or more in keeping with the spirit of the statute. At this juncture, the primary interest of Hammon is that it have the opportunity to mediate this dispute sooner, rather than later. Such a result is equally in the interests of the EEOC, and can be achieved without a formal stay of this action. The parties have agreed to proceed with mediation as expeditiously as practicable. Accordingly, except to the extent explained above, the motion will be denied.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

Hammon's motion to dismiss or for a stay is denied, except insofar as the parties are hereby ordered to engage in mediation under the District's ADR program as promptly as is practicable.

IT IS SO ORDERED.

Dated: January 22, 2007


RICHARD SEEBORG
United States Magistrate Judge

United States District Court
For the Northern District of California

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN GIVEN TO:**

2 Christopher E. Cobey ccobey@littler.com, sjoyner@littler.com; nculver@littler.com;
3 rrapoport@bbgslaw.com

4 Elizabeth Esparza-Cervantes Elizabeth.Esparza-Cervantes@eeoc.gov,
5 PATICKLER.SANFPO.EEOCSANF@EEOC.GOV

6 Cindy O'Hara cindy.ohara@eeoc.gov

7 Jonathan T. Peck Jonathan.Peck@eeoc.gov

8 William Robert Tamayo william.tamayo@eeoc.gov, pat.tickler@eeoc.gov

9 Counsel are responsible for distributing copies of this document to co-counsel who have not
10 registered for e-filing under the Court's CM/ECF program.

11 **Dated: 1/22/07**

Chambers of Judge Richard Seeborg

12 **By: _____ /s/ BAK**

United States District Court
For the Northern District of California

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28